

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
INDUSTRIAL MINERAL PRODUCTS, INC.,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 78-30

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of four \$250 civil penalties, arises from the alleged violation of Section 9.15(a) (airborne dust) of respondent's Regulation I. The hearing was held before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, convened at Tacoma, Washington on April 10, 1978. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant was represented by its officer, A. B. Berg; respondent was represented by its attorney, Keith D. McGoffin. Court reporter

1 Christina M. Check of Olympia recorded the proceedings.

2 Having heard the testimony, and considered the exhibits and argurents,
3 and being fully advised, the Hearings Board makes the following

4 FINDINGS OF FACT

5 I

6 Respondent pursuant to RCW 43.21E.260, has filed with this Hearings
7 Board a certified copy of its Regulation I containing respondent's
8 regulations and amendments thereto, of which official notice is taken.

9 II

10 Regular operation of the ASARCO smelter at Tacora, Washington
11 results in the daily production of hundreds of tons of slag. This
12 material, which reserbles a high-iron content basalt, is in a molten
13 stage when it leaves the smelter. The slag is conveyed in lorries
14 from the smelter to the slag dump, on Commencement Bay, where it is
15 processed.

16 III

17 Appellant, Industrial Mineral Products, Inc., by agreement with
18 ASARCO, processes the slag into a useful material. This is done
19 by first pouring the molten slag onto the site, and allowing it
20 to harden. A bulldozer equipped with a ripper then "rips" furrows
21 in the slag which allows water to penetrate and further cool the slag.
22 This cooling water also acts to contain dust which would otherwise be
23 emitted when the ripped and cooled slag is finally pushed into piles.
24 The water for this process is pumped from Commencement Bay, and sprayed
25 onto the slag. The slag must be ripped and piled regularly if that
26 operation is to keep pace with the slag output from the snelter.

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IV

On January 4, 5, 9 and 11, 1978, while on routine patrol, respondent's inspector observed airborne dust arising from the appellant's work site as slag was being processed. The dust clouds were dark in color and plainly visible from the inspector's viewpoint at the Tacoma Yacht Club which is near the work site. No dust suppression efforts were visible.

On January 4, 1978, off-shore winds affected the dust-suppression water being sprayed on the slag but were not so severe as to justify turning off the spray altogether, as was the case during the inspector's observation on that day. Ripping and piling of the slag took place despite the winds.

During the night of January 4, 1978, tidal action, erosion or other natural factors undercut the bank beneath the pump which draws water from Commencement Bay for the dust-suppression spray. The pump fell into the Bay and, although promptly recovered, could not be restored to service until January 12, 1978. The dust of January 5, 9 and 11, 1978, was the result of ripping and piling slag during the time that the pump was being restored. This work on the slag was the minimum amount necessary to keep pace with the slag output from the smelter. There was no attempt by appellant to bring in a substitute pump or to take other temporary measures to suppress dust emissions during the regular pump's restoration.

Appellant received four Notices and Orders of Civil Penalty, each assessing a \$250 civil penalty. Appellant appeals from these penalties.

VI

Appellant has been assessed three prior civil penalties of \$250

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1 each for dust emissions similar to those here involved. These were
2 each appealed to this Hearings Board and affirmed. Industrial Mineral
3 Products, Inc. v. Puget Sound Air Pollution Control Agency, PCHB No. 10
4 (1977) and No. 77-162-A (1978). There have been no subsequent violation
5 or penalty notices served upon appellant by respondent as of the date
6 of this hearing.

7 VI

8 Any Conclusion of Law which should be deemed a Finding of Fact
9 is hereby adopted as such.

10 From these Findings, the Pollution Control Hearings Board comes
11 to these

12 CONCLUSIONS OF LAW

13 I

14 The Notices and Orders of Civil Penalty now on appeal cite
15 Section 9.15(a) of respondent's Regulation I which states as follows:

16 It shall be unlawful for any person to cause or permit
17 particulate matter to be handled, transported or stored with-
18 out taking reasonable precautions to prevent the particulate
19 matter from becoming airborne.

19 II

20 Respondent proved a prima facie violation by showing that airborne
21 dust, from the slag processing site under appellant's control, could be
22 seen. From that a legitimate inference can be made that "reasonable
23 precautions" were not taken. The burden of proceeding or going forward
24 with the evidence at that point is upon appellant to prove that it had
25 taken "reasonable precautions" to prevent dust from becoming airborne.
26 Weverhaeuser Co. v. Puget Sound Air Pollution Control Agency, PCHB No.

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1 1076 (1977); Kaiser Aluminum Co. v. Puget Sound Air Pollution Control
2 Agency, PCHB Nos. 1079 and 1085 (1977); and Boulevard Excavating, Inc.
3 v. Puget Sound Air Pollution Control Agency, PCHB No. 77-69 (1977).

4 Appellant failed to carry that burden in this appeal. On January 4,
5 dust suppression water could have been applied, through diligence. We
6 take official notice that appellant holds an approved "Notice of
7 Construction" calling for zero dust emissions. If the wind is not too
8 great to stop processing of the slag, the greatest effort must be made
9 to apply dust suppression water during such processing. This would
10 include, at least, application of the water from upwind of the slag
11 processing work site.

12 On January 5, 9 and 11, upset conditions prevailed due to the
13 pump falling into the Bay in the early hours of January 5, followed by
14 more than a week of restoration work. Appellant, nevertheless, failed
15 to take reasonable precautions to prevent airborne dust when it
16 processed slag without obtaining a substitute pump, or other watering
17 system, during the restoration of the regular pump.

18 Neither under this Section 9.15 calling for "reasonable precautions"
19 nor under Section 9.16, which deals with "unavoidable upset," may
20 excessive emissions be excused where, as here, there is a failure to
21 take remedial action within a reasonable time after the initial occurrence
22 of an unavoidable upset. Appellant therefore violated Section 9.15(a)
23 of respondent's Regulation I on each of the four dates in question.

24 III

25 Because appellant has installed a dust suppression watering system
that may work effectively when operating, and because appellant kept

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CONCLUSIONS OF LAW AND ORDER

1 slag processing to a minimum while that watering system was not
2 operative, the assessed civil penalties should be mitigated.

3 IV

4 Any Finding of Fact which should be deemed a Conclusion of Law
5 is hereby adopted as such.

6 From these Conclusions, the Board enters this

7 ORDER

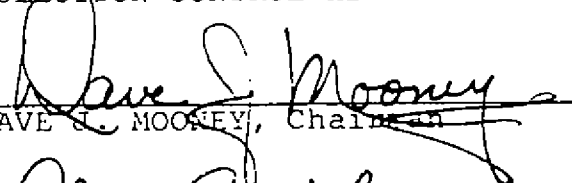
8 The violation alleged for January 4, 1978, is hereby affirmed;
9 provided, however, that the \$250 civil penalty imposed (No. 3656) is
10 remitted to the amount of \$125.

11 The violation alleged for January 5, 1978, is hereby affirmed;
12 provided, however, that the \$250 civil penalty imposed (No. 3657) is
13 remitted fully.

14 The violations alleged for January 9 and 11, 1978, are each hereby
15 affirmed and the two \$250 civil penalties imposed (Nos. 3661 and 3676)
16 are each affirmed also.

17 DONE at Lacey, Washington, this 18th day of April, 1978.

18 POLLUTION CONTROL HEARINGS BOARD

19 
20 DAVE S. MOONEY, Chairman

21 
22 CHRIS SMITH, Member

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24
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26
27 FINAL FINDINGS OF FACT,
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